

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the proposed)	
adoption of NEW RULE I)	
pertaining to the application)	
of Best Available Retrofit)	NOTICE OF PUBLIC HEARING
Technology to existing sources)	ON PROPOSED ADOPTION OF NEW
affecting visibility in)	RULE
mandatory Class I federal)	
areas.)	(AIR QUALITY)

TO: All Interested Persons

1. On _____ at ____:00 __.m. the Board of Environmental Review (Board) will hold a public hearing in Room ____ of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated proposed new rule.
2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., _____, 200__, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386 or email "ber@mt.gov".
3. The proposed new rule provides as follows:

NEW RULE I DEFINITIONS

(1) For purposes of this rule, the following definitions apply:
[40 CFR 301]

(a) "Best available retrofit technology, or BART" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the following:

- (i) the technology available;
- (ii) the costs of compliance;
- (iii) the energy and non-air quality environmental impacts of compliance;
- (iv) any pollution control equipment in use or in existence at the source;
- (v) the remaining useful life of the source; and
- (vi) the degree of objectively measured improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(b) "BART-eligible source" means an existing stationary facility which emits visibility-impairing pollutants in amounts the department reasonably anticipates will cause or contribute to any visibility impairment in any mandatory class I federal area.

Comment.

We understand that there may be some reluctance to alter definitions in a federally mandated regulation. Nonetheless, the proposals above do not seem unreasonable. In addition, the addition of the term "reasonably" is consistent with the definition of BART itself.

(c) "Building, structure, or facility" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities must be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0 respectively). [Necessary for

definition of "existing stationary facility"]

(d) "Deciview" means a measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements):
Deciview haze index = $10 \ln (\text{bext}/10 \text{ Mm}^{-1})$.
Where bext = the atmospheric light extinction coefficient, expressed in inverse megameters (Mm^{-1}).

(e) [Used in the definition of "BART-eligible source" at 40 CFR 301.] "Existing stationary facility" means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted.

- (i) fossil-fuel fired steam electric plants of more than 250 Million British thermal units per hour heat input;
- (ii) coal cleaning plants (thermal dryers);
- (iii) kraft pulp mills;
- (iv) Portland cement plants;
- (v) primary zinc smelters;
- (vi) iron and steel mill plants;
- (vii) primary aluminum ore reduction plants;
- (viii) primary copper smelters;
- (ix) municipal incinerators capable of charging more than 250 tons of refuse per day;
- (x) hydrofluoric, sulfuric, and nitric acid plants;
- (xi) petroleum refineries;
- (xii) lime plants;
- (xiii) phosphate rock processing plants;
- (xiv) coke oven batteries;
- (xv) sulfur recovery plants;
- (xvi) carbon black plants (furnace process);
- (xvii) primary lead smelters;
- (xviii) fuel conversion plants;
- (xix) sintering plants;
- (xx) secondary metal production facilities;

- (xxi) chemical process plants;
- (xxii) fossil-fuel boilers of more than 250 million British thermal units per hour heat input;
- (xxiii) petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels;
- (xxiv) taconite ore processing facilities;
- (xxv) glass fiber processing plants; and
- (xxvi) charcoal production facilities.

(f) "Mandatory class I federal area" means any area identified ~~below in 40 CFR 81.417.~~

- (i) Anaconda-Pintlar Wilderness
- (ii) Bob Marshall Wilderness
- (iii) Bridger Wilderness (Wyoming)
- (iv) Cabinet Mountains Wilderness
- (v) Fitzpatrick Wilderness (Wyoming)
- (vi) Gates of the Mountains Wilderness
- (vii) Glacier National Park
- (viii) Grand Teton National Park (Wyoming)
- (ix) Hells Canyon Wilderness (Idaho)
- (x) Lostwood Wilderness (North Dakota)
- (xi) Medicine Lake Wilderness
- (xii) Mission Mountain Wilderness
- (xiii) North Absaroka Wilderness (Wyoming)
- (xiv) Red Rock Lakes Wilderness
- (xv) Sawtooth Wilderness (Idaho)
- (xvi) Scapegoat Wilderness
- (xvii) Selway-Bitterroot Wilderness
- (xviii) Teton Wilderness (Wyoming)
- (xix) Theodore Roosevelt National Park (North Dakota)
- (xx) U.L. Bend Wilderness
- (xxi) Washakie Wilderness (Wyoming)
- (xxii) Yellowstone National Park

Comment.

We suggest that instead of referring to these areas in a federal citation, it seems more instructive to name the areas specifically. The areas are identified via the 1977 Clean Air Act Amendments and have not been added to or modified since. As a result, it is highly unlikely that the areas will change and thus naming them provides more clarity. In addition, by listing each area, the reader will not confuse other wilderness areas (Great Bear, e.g.) or Class I areas (Northern Cheyenne, Fort Peck, etc.) as being applicable or associated with

either the BART provisions [40 CFR 51.308(e)] or the protection of visibility as a whole defined by 40 CFR 51.300(a).

Finally, mandatory federal Class I areas that are located outside of Montana are also included (per 40 CFR 51, Subpart P requirement) in the list above. To keep the list manageable, only those areas that could be within 300 kilometers of a potential BART-eligible source were included. The 300 kilometer figure was chosen since this is the maximum dispersion modeling distance provided for in Appendix Y (incorporated by reference in NEW RULE II) of the BART program.

(g) "Fixed capital costs" means the capital needed to provide all of the depreciable components.

(h) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(i) "In existence" means that the owner or operator has obtained all necessary preconstruction approvals or permits required by federal, state, or local air pollution emissions and air quality laws or regulations and either has:

- (i) begun, or caused to begin, a continuous program of physical on-site construction of the facility; or
- (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed in a reasonable time. [Necessary for definition of "existing stationary facility"]

(j) "In operation" means engaged in activity related to the primary design function of the source. [Necessary for definition of "existing stationary facility"]

(k) "Installation" means an identifiable piece of process equipment.

(l) "Natural conditions" includes naturally occurring ~~phenomena~~phenomena that reduce visibility as objectively measured in terms of light extinction, visual range, contrast, or coloration.

(m) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(n) "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new component exceeds 50 percent of the fixed capital cost of a comparable entirely new source. Any final decision as to whether reconstruction has occurred shall be made in accordance with 40 CFR §60.15. [Necessary for definition of "existing stationary facility"]

(o) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant [17.8.901 adds "subject to regulation under the FCAA."][Necessary for definition of "existing stationary facility."]

(p) "Visibility impairment" means any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions.

NEW RULE II INCORPORATION BY REFERENCE

- (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference 40 CFR Part 51, Section IV of Appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule.

NEW RULE III BART REQUIREMENTS

- (1) The owner or operator of an existing stationary facility is not subject to the requirements of NEW RULE III for sulfur dioxide (SO₂) or oxides of nitrogen (NO_x) if it has the potential to emit less than 40 tons per year of such pollutant(s), or for PM-10 if it emits less than 15 tons per year of PM-10 as of [effective date of this rule] ~~from [date]~~ ~~to [date]~~ [40 CFR 308(e)(1)(ii)(C)]

Comment.

We note that the federal portion of this rule does not specify a date. However, the federal language (used here as well) refers to "has" the potential to emit . . . ' This seems to imply that the facility in question is to use the term "has" in the present tense of the verb "to have." Therefore, the implication (federally) is that the unit is to consider current PTE as opposed to the PTE that may have existed in 1977, or some other historical period. This is logical since BART is aimed at improving, where and if appropriate, regional haze as it currently exists in a mandatory class I federal area as opposed to what regional haze could have been like 29 years ago. In order to remove any interpretive doubt, it is suggested that the PTE analysis be conducted as of the effective date of this rule. (Another date may be acceptable if it is selected using the same logic described above). Also, it should be noted that the exact date is not likely critical. BART has applicability to only a handful of sources which likely have not had a significant change (that would affect applicability for SO₂, NO_x or PM-10) in their PTE for the past few years.

- (2) The owner or operator of a BART-eligible source which has the potential to emit NO_x, SO₂, or PM-10 in amounts that equal or

exceed those set forth in NEW RULE III(1) shall, as requested in writing by the department, submit available to the department information, within 30 days of receipt of each request for data necessary following the effective date of this rule, necessary to conduct air quality modeling pursuant to 40 CFR Part 51, Appendix Y., relevant to the impact of the BART-eligible source's emissions on visibility in any mandatory class I federal area. [40 CFR 308(e) & Guidelines at Sec. II.A.]

Comment.

There is a great deal of "tweaking" that could be done with this section to allow for submittal and re-submittal of information. However, we believe that the department currently has all, or nearly all, of the information it needs to conduct and complete dispersion modeling within the meaning of Appendix Y. As a result, a list of detailed requirements for this limited number of applicable facilities is probably not appropriate.

In addition, the above language is written such that the facility does not need to make judgments about what information is or is not required. The facility is obligated, however, to respond to data requests from the department provided the request is related to the subject matter at hand (40 CFR 51, Appendix Y). This allows the department to make specific requests and does not put the facility into "guessing" about specific data needs.

- (3) An owner or operator of a BART-eligible source or an agent with authority to represent the owner or operator of a BART-eligible source shall certify in writing that, based on information and belief formed after reasonable inquiry, the statements and information submitted pursuant to New Rule III(2) are true, accurate, and complete.
- (4) A BART-eligible source which the department finds causes or contributes to an increase in visibility impairment in an affected mandatory class I federal area measuring 0.5 deciviews or more when compared against the natural background level of visibility is subject to the requirements of NEW RULE III. The department shall notify each BART-eligible source of this finding and provide supporting documentation of the basis

for the finding. --[70 FR 39117-39118 & Guidelines Sec. III.A.]

- (5) Within ~~90~~180 days following the postmarked date of the department's notification pursuant to NEW RULE III(4), the owner or operator of the BART-eligible source shall submit to the department a proposal for BART made pursuant to Section IV of 40 CFR Part 51, Appendix Y. [40 CFR 308(e)(1)(ii)& Guidelines Sec. IV.]

See Comment Below.

- (6) Pursuant to the proposal submittal in accordance with New Rule III(5), the department may seek additional information or clarification relating to the BART proposal. Following a written request, the BART-eligible source must provide a response to the department inquiry within 30 days of receipt. The department may grant additional time for a response if so requested by the source and the department finds that an extension is warranted.

Comment.

These two topics (items 5 and 6 above) were discussed at some length during the most recent stakeholder's meeting. We believe that 90 days (as originally proposed) is too short. We are dealing with existing facilities that will be required to conduct a large engineering study effort to decide not only what technologies are "available" but how those technologies could or should be engineered into the current facility. In addition, analyses must be made to determine whether such technologies will results in an improvement in visibility as well as the effect such controls may have on other regulatory requirements (Some examples might include PSD applicability (the addition of a "new emitting unit" could change the source's 'actual' emissions), State air permit modification (de minimis or otherwise), Risk Management Plan applicability (for handling a new material on site), etc.). This entire analysis is much different from a typical BACT review where the control technologies are being considered and engineered into, and thus integral to, the original design of the facility. Retrofit engineering into an existing process is more

difficult with more restrictions and less options than starting new.

A new section 6 is being proposed to allow some give-and-take with the department regarding a BART proposal. Due to the complexity of both the BART analysis itself and the dispersion modeling analysis (signifying benefits to the proposed BART), some time needs to be allotted for feedback between the department and the source. This is conceptually consistent with current permitting and BACT analyses. DEQ in almost every case seeks additional information regarding a proposed BACT. The BART program should be afforded the same opportunity lest decisions are made (or proposed) without a full understanding by all parties of data, impacts and alternatives.

(~~67~~) The department shall:

- (i)— issue a preliminary notice of BART determination,
- (ii) notify the owner or operator of the BART-eligible source and interested parties of the preliminary notice; , and
- (iii) provide at least 30 days of public comment on the preliminary notice of BART determination.

(~~78~~) The department may, on its own action, or at the request of the owner or operator of a BART-eligible source or an interested party, extend by 15 days the period within which public comments may be submitted if the department finds that an extension is necessary to allow the department to make an informed decision.

- (a) Any request for an extension, as provided under NEW RULE III(~~58~~), by the owner or operator of a BART-eligible source or an interested party must be submitted to the department by the date that written comments on the preliminary notice of BART determination originally were due.

(~~89~~) Following the public comment period, the department shall issue a final notice of BART determination and notify the owner or operator of the BART-eligible source and interested parties of such notice.

The owner or operator of a BART-eligible source shall install and begin operating control equipment as set forth in the department's notice of BART determination as expeditiously as practicable, but no later than five years after EPA approval of the BART provisions to the Montana state implementation plan revision~~the department's issuance of such notice~~. [40 CFR 51.308(e)(1)(iv)~~42 USC 7491(b)(2)(A)~~]

Comment.

*We suggest the date the BART equipment be operating be consistent with the federal language. The federal language calls for operation within 5 years of the **date the SIP is approved**, not the date an agency decision on a specific BART is made. Otherwise, implementation dates will vary based on when the department reaches a final decision on a source-specific BART.*

- (10) A person who is jointly or severally adversely affected by the department's notice of BART determination may request a hearing before the board. The request for hearing must be filed within 15 days following the department's final issuance of the notice of BART determination and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title II, chapter 4, part 6, MCA, apply to a hearing held under this rule.
- (11) The department's action is not final unless 15 days have elapsed from the date of the department's issuance of the final notice of BART determination and no person requests a hearing before the board. The filing of a request for a hearing postpones the effective date of the department's notice of final BART determination until the conclusion of the hearing and the issuance of a final decision by the board. [Due process / administrative remedies].

AUTH: 75-2-111, 75-2-203, MCA.

IMP: 75-2-203, MCA.

REASON: Montana has historically operated an air pollution control program that meets or exceeds federal minimum requirements. Montana wishes to continue a tradition of taking primary responsibility for execution of such a program. The Environmental Protection Agency (EPA) promulgated regulations that specifically address regional haze in various National Parks, Wilderness Areas, etc. Therefore, in order to maintain primacy in the air quality program, the Board of Environmental Review proposes to adopt changes in Montana's program to implement the changes in the federal requirements. Notwithstanding such a goal, Montana is also home to many remarkable national parks and wilderness areas and enjoys a reputation as a state with stunning viewsheds valued by residents and visitors alike. However, increasing levels of human-caused air pollution obscure these scenic vistas, diminishing visitor experience and compromising the inherent and economic value of these areas.

Comment.

It seems more appropriate to begin a discussion of agency reasoning to its root underlying requirement. That is, this BART program is being implemented due to requirements and changes in federal regulations. In order for Montana to maintain primacy in the air program, it must amend the state implementation plan [per 40 CFR 51.308(e)] to reflect those requirements. Therefore, a discussion of this overall purpose should appear at the beginning of the "REASON" section.

It should be noted that a desire to maintain the state's beauty is a reason for adopting protective regulations. However, that is not the primary motivator for the specific language in the proposed new rules.

Many sources of air pollution constructed between 1962 and 1977 were built without an analysis of their emissions ability to impair visibility.~~sufficient controls for visibility impairing emissions.~~ In response to a growing concern over the effects of visibility impairing emissions on our nation's scenic areas, Congress declared a national goal for visibility that includes the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I federal areas, which impairment results from human-caused air pollution. 42 USC §7491 of the federal Clean Air Act (CAA) requires all states with mandatory Class I federal areas to adopt

visibility protection programs that meet the requirements of federal regulations.

As a demonstration of visibility protection, states are required to submit regulations, including specific emission limits on major sources of visibility impairing emissions, to the U.S. Environmental Protection Agency (EPA) for approval as revisions to the State Implementation Plan (SIP). Congress further directed EPA to develop regulations to guide state action. The federal regulations implementing 42 USC §7491 provide guidance for the state to establish goals and emission reduction strategies for improving visibility in all mandatory Class I federal areas, i.e., national parks of 6,000 acres or more and wilderness areas of 5,000 acres or more established on or before August 7, 1977. Montana has twelve mandatory Class I federal areas.

On July 6, 2005, EPA promulgated the Regional Haze Regulations and Guidelines for Best Available Control Technology (BART) Determinations. 70 FR 39104. The federal rules direct states to identify existing sources of visibility impairment and require those sources to apply BART.

The Board is proposing the New Rules to require BART for existing sources of visibility impairing emissions. The proposed rules would require BART-eligible sources to submit information to enable the Department to make accurate assessments of the impact of the BART-eligible source on visibility in Montana's twelve mandatory Class I federal areas. Certain sources with a potential to emit visibility impairing emissions in de minimus amounts would be exempt from the regulatory requirements of the proposed rule.

The Department would conduct a modeling analysis to determine whether a BART-eligible source causes or contributes to visibility impairment in mandatory Class I federal areas. BART-eligible sources that are determined to "cause or contribute" to visibility impairment are required to submit to the Department a proposal for BART. Under the proposed rule, the Department would review the proposal and issue a preliminary determination of BART. The Department would take public comment on a preliminary notice of BART determination and issue a final notice of BART determination. To ensure the benefits of the BART determination are realized quickly, the new rule would require installation and operation of BART as expeditiously as practicable, but no later than five years after the Department or the Board determines that BART is required. The new rule provides a person adversely affected by the Department's action may request a contested case hearing before

the Board. The Board is also proposing definitions in the new rule. These definitions would conform to definitions in 40 CFR 51.301.

The Board is proposing to reference within the new rule Section IV of the "Guidelines for BART Determinations Under the Regional Haze Rule," which is codified in the federal rules at 40 CFR Part 51, Appendix Y, for determining BART. Section IV describes procedures for identifying the best system of continuous emission reductions taking into account the factors set forth in the definition of BART.

If adopted by the Board, the Department intends to submit the new rule to the Governor requesting incorporation into the Montana SIP.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@mt.gov, no later than 5:00 p.m., _____, 200_. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the Board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this MAR Notice No. 17-_____ agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901,

Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the Board.

BOARD OF ENVIRONMENTAL REVIEW

BY: _____
JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN

Reviewed by:

David Rusoff, Rule Reviewer

Certified to the Secretary of State _____, 2006.

MAR Notice No. 17-_____

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